IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

CRL.A.No. 40 of 1999()

CC.36/1997 of JUDL.MAGISTRATE OF FIRST CLASS, NADAPURAM

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APPELLANT:

ABDULLA M.P., S/O.MAMMED,
MALAYILPEEDIKAYIL HOUSE,
CHERAPURAM P.O.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

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1. V.P.SOOPPY, S/O. IBRAYI,
VALIYAPARAMBATH HOUSE,
VELAM AMSOM, KURICHKAM.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.P.K.RAMAKUMAR
PUBLIC PROSECUTOR, SRI S.DILEEP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.40 of 1999

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Dated this the 26th day of June, 2007

J U D G M E N T

The appellant is the complainant in C.C.No.36/1997, which stands dismissed. The complainants case is that on 06/10/1996, the accused borrowed a sum of rupees one lakh and issued the cheque dated 10/10/1996 and when the same was presented for encashment, the same got dishonoured for want of funds in the account of the accused. Lawyer notice sent was not replied to nor was the amount paid. The evidence adduced in the matter consisted of the testimony of PWs.1 and 2 and Exts.P1 to P7. The defence examined DWs.1 to 3 and marked Exts.D1 to D5.

2. Defence version is that the blank cheque was issued by the accused to one Sankaran, when he borrowed a sum of Rs.5000/-. Thereafter, he got employment in the Middle East and a sum of Rs.6000/- was repaid to Mr.Sankaran through his wife and the cheque was taken back from Sankaran by his father-in-law. Immediately on his return from abroad, he divorced his wife.

There are other litigations in between himself and his divorced wife. According to him, the cheque that was taken back from Sankaran by his father-in-law has been put to use by the complainant, who is a close relative of his former wife. He has totally denied the borrowal of the amount or the execution of the cheque.

3. The trial court after considering the evidence adduced in the matter found that evidence of PW.1 is not sufficiently convincing as to the execution of the cheque and that the defence version and the evidence of DWs.1 to 3 that included DW.3, the accused, and Exts.D1 to D5, projected a probable case sufficient enough to hold that the complainant has failed to establish beyond reasonable doubt that the accused is guilty of the alleged offence.

4. In the evidence of PW.2, the complainant, the court below has noticed certain discrepancies and also that evidence of PW.2 is not convincing as to whether the complainant was having sufficient financial resources to lend a sum of rupees one lakh.

As noted by the court below and as contended by the counsel herein, the version of PW.2 that the amount was borrowed on 06/10/1996, immediately after the accused returned from abroad appears somewhat suspicious. It stands admitted that the accused returned from abroad on 04/10/1996. The above fact has been admitted by DW.2, his former wife, although, she did not support the defence version and was treated as hostile. The divorce was executed on 16/10/1996. As pointed out, the parties would have been on bitter terms and it is unlikely that a close relative of the wife would have given a sum of rupees one lakh just prior to the date of execution of divorce. The trial court has also noted that PW.2 has stated in the cross-examination that the accused signed on the reverse side of the cheque which cannot be true. Further Ext.D4 letter produced by DW.3, the accused, which was allegedly sent by him to his wife from abroad contains directions that the amount due to Sankaran should be paid and the cheque should be taken back and specifically that the amount due to Sankaran, that is, Rs.6000/- should be paid.

5. It is the case of the appellant that the above letter was produced by the accused and had it been received by his wife and his wife has acted as per the instructions contained in the above letter, the letter would not have been in the possession of the accused. But I find that DW.3, the accused, has not been cross-examined about these aspects at all.

6. The evidence of DW.1 Sankaran supports the version of the accused in full regarding the borrowal from himself and the repayment and the return of the cheque to the father of DW.2.

7. It was also brought out in the cross-examination of PW.2, the complainant, that he would not be having sufficient resources to lend a sum of rupees one lakh as he has admitted that he and his wife were having loans to be repaid. He has also admitted that Ext.D3 agreement, with respect to a property transaction, could not be executed for want of funds.

In the circumstances and taking into consideration the restraints of the appellate jurisdiction against an order of

acquittal, I find that there is no scope for interference in the findings of the court below dismissing the complaint.

Criminal appeal is, therefore, dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.A.No.40 of 1999

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J U D G M E N T

26th June, 2007